

**§ 1601.21 Reasonable cause determination: Procedure and authority.**

(a) After completing its investigation, where the Commission has not settled or dismissed a charge or made a no cause finding as to every allegation addressed in the determination under § 1601.19, the Commission shall issue a determination that reasonable cause exists to believe that an unlawful employment practice has occurred or is occurring under title VII or the ADA. A determination finding reasonable cause is based on, and limited to, evidence obtained by the Commission and does not reflect any judgment on the merits of allegations not addressed in the determination.

(b) The Commission shall provide prompt notification of its determination under paragraph (a) of this section to the person claiming to be aggrieved, the person making the charge on behalf of such person, if any, and the respondent, or in the case of a Commissioner charge, the person named in the charge or identified by the Commission in the third party certificate, if any, and the respondent. The Commission may, however, on its own initiative reconsider its decision or the determination of any of its designated officers who have authority to issue Letters of Determination, Except that the Commission will not reconsider determinations of reasonable cause previously issued against a government, governmental entity or political subdivision after a failure of conciliation as set forth in § 1601.25.

(1) In cases where the Commission decides to reconsider a dismissal or a determination finding reasonable cause to believe a charge is true, a notice of intent to reconsider will promptly issue. If such notice of intent to reconsider is issued within 90 days from receipt of a notice of right to sue and the charging party has not filed suit and did not receive a notice of right to sue pursuant to § 1601.28(a)(1) or (2), the notice of intent to reconsider will vacate the dismissal or letter of determination and revoke the notice of right to sue. If the 90 day period has expired, the charging party has filed suit, or the charging party had requested a notice of right to sue pursuant to § 1601.28(a)(1) or (2), the notice of intent

to reconsider will vacate the dismissal or letter of determination, but will not revoke the notice of right to sue. After reconsideration the Commission will issue a determination anew. In those circumstances where the notice of right to sue has been revoked, the Commission will, in accordance with § 1601.28, issue a notice of right to sue anew which will provide the charging party with 90 days within which to bring suit.

(2) The Commission shall provide prompt notification of its intent to reconsider, which is effective upon issuance, and its final decision after reconsideration to the person claiming to be aggrieved, the person making the charge on behalf of such person, if any, and the respondent, or in the case of a Commissioner charge, the person named in the charge or identified by the Commissioner in the third-party certificate, if any, and the respondent.

(c) Where a member of the Commission has filed a Commissioner charge, he or she shall abstain from making a determination in that case.

(d) The Commission hereby delegates to District Directors, or upon delegation, Area Directors or Local Directors; and the Program Director, Office of Program Operations, or upon delegation, the Directors, Field Management Programs, Office of Program Operations, the authority, except in those cases involving issues currently designated by the Commission for priority review, upon completion of an investigation, to make a determination finding reasonable cause, issue a cause letter of determination and serve a copy of the determination upon the parties. Each determination issued under this section is final when the letter of determination is issued. However, the Program Director, Office of Program Operations or upon delegation, the Director of Systemic Programs, Office of Program Operations or the Directors, Field Management Programs, Office of Program Operations; each District Director; each Area Director and each Local Director, for determinations issued by his or her office, may on his or her own initiative reconsider determinations, Except that

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such directors may not reconsider determinations of reasonable cause previously issued against a government, governmental entity or political subdivision after a failure of conciliation as set forth in § 1601.25.

(1) In cases where the issuing Director decides to reconsider a dismissal or a determination finding reasonable cause to believe a charge is true, a notice of intent to reconsider will promptly issue. If such notice of intent to reconsider is issued within 90 days from receipt of a notice of right to sue and the charging party has not filed suit and did not request a notice of right to sue pursuant to § 1601.28(a)(1) or (2), the notice of intent to reconsider will vacate the dismissal or letter of determination and revoke the notice of right to sue. If the 90 day period has expired, the charging party has filed suit, or the charging party had received a notice of right to sue pursuant to § 1601.28(a)(1) or (2), the notice of intent to reconsider will vacate the dismissal or letter of determination, but will not revoke the notice of right to sue. After reconsideration the issuing Director will issue a determination anew. In those circumstances where the notice of right to sue has been revoked, the issuing Director will, in accordance with § 1601.28, issue a notice of right to sue anew which will provide the charging party with 90 days within which to bring suit.

(2) When the issuing Director does reconsider, he or she shall provide prompt notification of his or her intent to reconsider, which is effective upon issuance, and final decision after reconsideration to the person claiming to be aggrieved, the person making the charge on behalf of such person, if any, and the respondent, or in the charge or identified by the Commissioner in the third party certificate, if any, and the respondent.

(e) In making a determination as to whether reasonable cause exists, substantial weight shall be accorded final findings and orders made by designated FEP agencies to which the Commission defers charges pursuant to § 1601.13. For the purposes of this section, the following definitions shall apply:

(1) "Final findings and orders" shall mean:

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(i) The findings of fact and order incident thereto issued by a FEP agency on the merits of a charge; or

(ii) The consent order or consent decree entered into by the FEP agency on the merits of a charge.

*Provided, however,* That no findings and order of a FEP agency shall be considered final for purposes of this section unless the FEP agency shall have served a copy of such findings and order upon the Commission and upon the person claiming to be aggrieved and shall have informed such person of his or her rights of appeal or to request reconsideration, or rehearing or similar rights; and the time for such appeal, reconsideration, or rehearing request shall have expired or the issues of such appeal, reconsideration or rehearing shall have been determined.

(2) "Substantial weight" shall mean that such full and careful consideration shall be accorded to final findings and orders, as defined above, as is appropriate in light of the facts supporting them when they meet all of the prerequisites set forth below:

(i) The proceedings were fair and regular; and

(ii) The practices prohibited by the State or local law are comparable in scope to the practices prohibited by Federal law; and

(iii) The final findings and order serve the interest of the effective enforcement of title VII or the ADA: *Provided,* That giving substantial weight to final findings and orders of a FEP agency does not include according weight, for purposes of applying Federal law, to such Agency's conclusions of law.

[42 FR 55388, Oct. 14, 1977, as amended at 45 FR 73036, Nov. 4, 1980; 48 FR 19165, Apr. 28, 1983; 49 FR 13024, Apr. 2, 1984; 51 FR 18778, May 22, 1986; 52 FR 26959, July 17, 1987; 53 FR 3370, Feb. 7, 1988; 54 FR 32061, Aug. 4, 1989; 56 FR 9624, 9625, Mar. 7, 1991]

### § 1601.22 Confidentiality.

Neither a charge, nor information obtained during the investigation of a charge of employment discrimination under the ADA or title VII, nor information obtained from records required to be kept or reports required to be filed pursuant to the ADA or title VII,